No. 12701

In the United States Court of Appeals for the Ninth Circuit

National Labor Relations Board, Petitioner

vs.

Leadbetter Logging & Lumber Company, Respondent

On Petition for Enforcement of an Order of the National Labor Relations Board

BRIEF OF RESPONDENT, LEADBETTER LOGGING & LUMBER CO.

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BRIEF OF RESPONDENT, LEADBETTER LOGGING & LUMBER CO.

We are concerned with whether the refusal of Respondent to employ Robert Cool was an unfair labor practice.

Respondent has suffered throughout this proceeding because of a misapprehension by the National Labor Relations Board and its representatives of the character of the controversy. Throughout, the Board and its representatives have treated the controversy as one involving the discharge of an employee for Union activity. The undisputed fact is that the person involved, Robert Cool, was not discharged (R. 91-92). Yet from the time of the first action by representatives of the Board, it has been treated as a discharge problem. For ex-

ample, the Examiner, who first heard the case, clearly thought that he had before him for decision the discharge of an employee for Union activity. His report and recommended order shows:

III. "The unfair labor practices. The discriminatory discharge of Robert Irwin Cool" (R. 17). "Concluding Findings on the Discharge of Robert Irwin Cool" (R. 32).

The Board attempted to cure this misapprehension by a footnote to its decision to the effect: "The Trial Examiner's inadvertant reference at various points in the Intermediate Report to the discharge of Cool is hereby corrected to refer to the refusal to hire Cool" (R. 49). But the Board emphasizes this mistaken approach by referring only to "Discharge" cases to support its decision and order. *N.L.R.B.* v. *American Potash & Chemical Corp.,* 98 F. 2d 488, 493-494 (C.A. 9); *N.L.R.B.* v. *Moltrup Steel Products Co.,* 121 F. 2d 612, 615 (C.A. 3); *N.L.R.B.* v. *Waterman Steamship Co.,* 309 U. S. 206, 223; *N.L.R.B.* v. *Tovrea Packing Co.,* 111 F. 2d 626, 629 (C.A. 9); *N.L.R.B.* v. *Kennametal, Inc.,* 182 F. 2d 817, 819 (C.A. 3); *N.L.R.B.* v. *Gullet Gin Co.,* 179 F. 2d 499, 502 (C.A. 5), appeal pending; *American Steel Foundries* v. *N.L.R.B.,* 158 F. 2d 896, 899 (C.A. 7); *N.L.R.B.* v. *Nelson Mfg. Co.,* 120 F. 2d 444, 446 (C.A. 8); *N.L.R.B.* v. *J. G. Boswell Co.,* 136 F. 2d 585, 596 (C.A. 9); *N.L.R.B.* v. *Walt Disney Productions,* 146 F. 2d 44, 49 (C.A. 9); *N.L.R.B.* v. *National Motor Bearing Co.,* 105 F. 2d 652, 658, 659 (C.A. 9); *N.L.R.B.* v. *Brezner Tanning Co., Inc.,* 141 F. 2d 62, 64 (C.A. 1); *N.L.R.B.* v. *Ford Bros.,* 170 F. 2d 735, 738 (C.A. 6); *Firth Carpet Co.* v. *N.L.R.B.,* 129 F. 2d 633, 636 (C.A.

2); *N.L.R.B.* v. *Electric City Dyeing Co.*, 178 F. 2d 980, 983 (C.A. 3); *Peoples Motor Express Co.* v. *N.L.R.B.*, 165 F. 2d 903, 906 (C.A. 4).

The following cases referred to by the Board in support of its decision and order are to be distinguished from the matter now before the Court because in each of these cases the employer had an anti-union background, an element lacking in the present matter. *N.L.R.B* v. *American Potash & Chemical Corp.*, 98 F. 2d 488 (C.A. 9); *N.L.R.B.* v. *Tovrea Packing Co.*, 111 F. 2d 626 (C.A. 9); *American Steel Foundries* v. *N.L.R.B.*, 158 F. 2d 896 (C.A. 7); *N.L.R.B.* v. *Bachelder*, 120 F. 2d 574 (C.A. 7); *N.L.R.B.* v. *J. G. Boswell Co.*, 136 F. 2d 585 (C.A. 9); *N.L.R.B.* v. *Walt Disney Productions*, 146 F. 2d 44 (C.A. 9); *N.L.R.B.* v. *National Motor Bearing Co.*, 105 F. 2d 652 (C.A. 9); *N.L.R.B.* v. *Brezner Tanning Co.*, Inc. 141 F. 2d 62 (C.A. 1); *N.L.R.B.* v. *Illinois Tool Works*, 153 F. 2d 811 (C.A. 7); *N.L.R.B.* v. *Ford Brothers*, 170 F. 2d 735 (C.A. 6); *Firth Carpet Co.* v. *N.L.R.B.*, 129 F. 2d 633 (C.A. 2); *N.L.R.B.* v. *Electric City Dyeing Co.*, 178 F. 2d 980 (C.A. 3); *Joy Silk Mills* v. *N.L.R.B.*, 27 L.R.R.M. 2012 (C.A.D.C.); *N.L.R.B.* v. *Mackay Radio and Telegraph Co.*, 304 U. S. 333.

The following cases referred to by the Board in support of its decision and order are to be distinguished from the matter now before the Court because in each of these cases the employer had no substantial cause for discharge or for a refusal to rehire. *N.L.R.B.* v. *Moltrup Steel Products Co.*, 121 F. 2d 612 (C.A. 3); *N.L.R.B.* v. *Waterman Steamship Co.*, 309 U. S. 206; *N.L.R.B.*

v. *Nelson Mfg. Co.,* 120 F. 2d 444 (C.A. 8); *N.L.R.B.* v. *Link Belt Co.,* 311 U. S. 584; *N.L.R.B.* v. *John Engelhorn & Sons,* 134 F. 2d 553 (C.A. 3); *Peoples Motor Express Inc.,* v. *N.L.R.B.,* 165 F. 2d 903 (C.A. 4); *Gullett Gin Co.* v. *N.L.R.B.,* 179 F. 2d 499, (C.A. 5).

N.L.R.B. v. *Kennametal, Inc.,* 182 F. 2d 817 (C.A. 3), cited by Board, can be distinguished in that Respondent conceded that the discharges were for leading a work stoppage.

N.L.R.B. v. *Donnelly Garment Co.,* 330 U. S. 219, cited by Board, can be distinguished because it involves neither a discriminatory discharge or refusal to hire. The sole point is whether the Respondent there dominated and gave aid and assistance to an inside plant union.

Another feature is worthy of attention. The Hearing Officer recommended that the Respondent cease and desist from all violations of the Labor-Management Relations Act. The Board, however, found that, "We are not persuaded, upon this record, that the Respondent has demonstrated a general intent to defeat self organization and the attitude of opposition to the Act. * * * We are particularly mindful in this regard of the Respondent's past amicable relations with this and other Unions and the fact that the Respondent has been dealing with the Union under a collective bargaining agreement. Under all the circumstances we believe that the policies of the Act will be adequately effectuated by ordering the Respondent to cease and desist from the unfair labor practices found and from any like or related conduct" (R. 49-50).

The approach of the Board requires a statement of the facts to place the real question in its accurate background.

I. The relation of Respondent and Unions representing its employees must be given weight in judging Respondent's motives in refusing to employ Robert Cool. *Mt. Vernon-Woodberry Mills, Inc.,* 64 N.L.R.B. 294 (1945); *The Timken Roller Bearing Company* 60 N.L.R.B. 852 (1945); *Firestone Tire & Rubber Company* 67 N.L.R.B. 584 (1946).

II. The fact that Robert Cool was a Union representative does not guarantee him a job in spite of his insubordination and refusal to do his job. *Stonewall Cotton Mills* v. *N.L.R.B.* (5th C.), 129 F. 2d 629, 632 (1942); *N.L.R.B.* v. *Fulton Bag & Cotton Mills* (5th C.), 175 F. 2d 675, 677 (1949); *N.L.R.B.* v. *Reynolds Corp.* (5th C.), 168 F. 2d 877 (1948); *N.L.R.B.* v. *Carolina Mills* (5th C.), 167 F. 2d 212 (1948); *N.L.R.B.* v. *Goodyear Tire & Rubber Co.,* (5th C.), 129 F. 2d 661 (1942).

With this preface let us look at the facts:

STATEMENT OF THE CASE

Respondent, an Oregon Corporation, is engaged in logging and lumbering operations in the State of Oregon, including a boom operation at Oswego, Oregon. Respondent purchased the Oswego boom in February, 1947 (R. 17: 187, 191). Respondent retained the crew then employed, including Robert Irwin Cool, the person allegedly

discriminated against by a refusal to hire and the employee involved in this proceeding. Cool had been employed by the various operators of the boom from about 1941 (R. 119) until after the war broke out (R. 119). The work on the boom in question consists of unloading logs from railroad cars, down a skid and into the river where the logs are made into rafts. In 1946 Cool talked to Walter J. Kerry, Respondent's supervisor, about a job. Cool mentioned that he knew Roy T. Hedrick, Respondent's foreman, and after Kerry talked to Hedrick, Kerry hired Cool as a boom man upon Hedrick's recommendation (R. 72, 121-122). Cool continued to work at the boom until December, 1947, when he voluntarily quit (R. 72, 91-92). In 1948, Cool again applied to Respondent for a job by telephoning Hedrick who told him "No" (R. 92). A little later Hedrick asked George Willett, business agent, for a boom man. Willett said that Cool was available but Hedrick said he didn't want him (R. 92-93). The reason Hedrick refused to rehire Cool was for insubordination and overstepping his authority as job steward (R. 164, 181). The prime reason being insubordination (R. 181).

Cool's Insubordination

Hedrick ordered Cool to do rafting in a cerain manner but Cool refused to do so and ordered Hedrick off the raft (R. 77, 97, 99) and Cool admitted so doing (R. 133-134). Hedrick protested Cool's actions to the Union Business Agent (R. 81).

Cool was elected job steward in 1947 (R. 76, 122-123). It was necessary in the operation of the boom that certain

repair and maintenance work be done on the skids and rollway (R. 166). The boom work and the maintenance work are interchangeable (R. 82). Hedrick ordered some repair work to be done, but Cool refused to let the work proceed (R. 82-83, 167-168). Hedrick assigned one employee from the raft and the two men on the unloader to do some maintenance work on the rollway. Cool said he thought Hedrick was working out of turn on the rollway and Cool ordered the engineer to lower the skid so that the men could not work on the rollway. The men returned to the bunkhouse and did not do any work for about five hours, (R. 82-83, 167-168, 169). At this time there was no understanding or past practice restricting maintenance work when a certain number of logs were handled in a day (R. 84, 85, 87, 169). No other employee or committee member accompanied Cool on this occasion (R. 84).

On another occasion, Hedrick had asked two men to move some steel. They had no objection when Cool, accompanied by a committeeman, approached Hedrick and said, "Well, if you're going to shoot off your big mouth, we just won't do it." The men continued to work but Hedrick in order to avoid the men getting in trouble with the Local union sent the men off the job and the work was stopped (R. 165).

Cool Left Job Without Permission

At about this time, Cool left the job for an hour and a half without obtaining permission (R. 88, 132, 174). This is not denied by Cool (R. 131-132). When Cool returned Hedrick asked to come over to the office and

talk the thing over. Cool refused saying, "Oh Hell, I won't go anyplace with you" (R. 174). Hedrick went to the office with the intention of firing Cool but during the walk decided against it as he figured Cool had to make a living (R. 174).

Other Incidents Between Cool and Hedrick

Hedrick hired a non-union man one day and a union man the next day. The union man went to work a day before the other man. Cool questioned Hedrick on the seniority status of the men and was informed that when the time for layoff came seniority standing of the two men would be settled (R. 130-131, 140).

Cool caused trouble with the crew when he ordered Hedrick off the raft and told Hedrick that the crew would take orders only from the head rafter. Later Cool came to Hedrick and said that the crew refused to take orders from the head rafter (R. 79-80).

One employee quit Respondent's boom because of Cool (R. 81).

Cool stopped Hedrick "pike pole pushing" on numerous occasions. Cool as a job steward had the right to stop this work by Hedrick. Hedrick knew this and made no objection as all other union stewards had stopped him (R. 90, 173, 182).

Respondent's Relations With the Union

Hedrick rehired Ernest Brazeau and Buehl Patterson, both of whom had been active in union matters (R. 164).

Brazeau had been a committee man (R. 164). Hedrick was an old union man and had been very active in union affairs holding the position of job steward and Secretary (R. 162). Though Hedrick was quite a profficient "cusser", he denies making any malicious statements against the Union (R. 176, 183). Respondent has cooperated with the union and tried to keep things going harmoniously (R. 188). Respondent has had satisfactory union relations and this is the first unfair labor practice charge against Respondent (R. 194). Respondent has agreed to consent elections in many union negotiations and has many Union shop clauses in its union contracts (R. 193).

Respondent's motives and intent are recognized by the Board in its supplemental order which states, "We are not persuaded, upon this record, that the Respondent has demonstrated a general intent to defeat self organization and an attitude of opposition to the purposes of the Act. We are particularly mindful in this regard of the Respondent's past amicable relations with this and other unions and the fact that the Respondent has been dealing with the union under a collective bargaining agreement" (R. 49).

Respondent's Refusal to Rehire Cool

During the summer of 1948, Cool telephoned Hedrick and asked him for a job. Hedrick told him there was no work available (R. 18, 92, 137-138). In September, 1948, Hedrick asked the Business Agent if there was a boom man available (R. 92, 111-112, 117, 162). The union offered Cool (R. 92, 111, 162). Hedrick refused

to hire Cool but did hire E. W. Fromong (R. 93) who told Hedrick that he had had experience in boom work (R. 93). Fromong was recommended to Hedrick by a boom man as a boom man (R. 99).

Following the refusal to hire Cool, the Union, in accordance with its contract, filed a formal grievance (R. 27, 113-114) and meetings were held (R. 150). At the final meeting Respondent's representatives said that they "would hire whoever they saw fit," and if the Union was not satisfied it could file charges (R. 114). The unfair labor practice charge was then filed.

1. The findings of the Board, not supported by substantial evidence, are not entitled to consideration. *Appalachian Electric Power Co.* v. *N.L.R.B.* (4h C.), 93 F. 2d 985, 989 (1938); *N.L.R.B.* v. *Thompson Products* (6th C.), 97 F. 2d 13, 15 (1938); *Consolidated Edison Co.* v. *N.L.R.B.*, 305 U. S. 197, 59 S. Ct. 206; *N.L.R.B. v. Kopman-Woracek Shoe Co.* (8th C.), 158 F. 2d 102, 108 (1946); *N.L.R.B.* v. *William Davies Co.* (7th C.), 135 F. 2d 179, 183 (1943).

2. Inasmuch as Cool was not rehired for cause, the Board had no authority to require his employment, with pay for the period of non-employment. *N.L.R.B.* v. *Scullin Steel Co.* (8th C.), 161 F. 2d 143, 151 (1947); *N.L.R.B.* v. *William Davies Co.* (supra); *Loveman, Joseph & Loeb* v. *N.L.R.B.* (5th C.), 106 F. 2d 769, 771 (1945).

ARGUMENT

The following facts are admitted:

Hedrick ordered Cool to do rafting in a certain manner but Cool refused to do so and ordered Hedrick off the raft (R. 77, 97). Cool admitted so doing (R. 98, 99, 133-134). Hedrick protested Cool's actions to the Union Business Agent (R. 81).

There is no question but that the employer has the right to direct the work and a refusal on the part of the employee to take such reasonable direction is grounds for discharge. *N.L.R.B.* v. *Scullin Steel Co.* (8th C.), 161 F. 2d 143, 151 (1947); Cf. *N.L.R.B.* v. *Montgomery Ward & Co.* (8th C.), 157 F. 2d 486, 496 (1946); *N.L.R.B.* v. *Sands Mfg. Co.* 306 U. S. 332, 59 S. Ct. 508, 83 L. Ed. 682 (1939).

Shortly after Cool returned to work in 1947, he was elected job steward (R. 76, 122-123). It was necessary in the operation of the boom that certain repair and maintenance work be done (R. 166). Boom work and the maintenance work are interchangeable (R. 82). Hedrick ordered some maintenance work to be done, but Cool refused to let the work proceed (R. 82-83, 167-168). Hedrick assigned one employee from the raft and the two men on the unloader to do some maintenance work on the rollway. Cool said he thought Hedrick was working out of turn on the rollway and Cool ordered the engineer to lower the skid that the men could not work on the rollway. The men returned to the bunkhouse and did not do any work for about five hours (R. 82-83, 167-168, 169). At this time there was no understanding or past practice restricting maintenance work when a certain

number of logs were handled in a day (R. 85, 87, 169). No other employee or committee member accompanied Cool on this occasion (R. 84).

The refusal to do the work assigned was ground for discharge and therefore the refusal to reinstate was not an unfair labor practice. *Firth Carpet Company* v. *N.L.R.B.* (2nd C.), 129 F. 2d 633 (1942).

On another occasion, Hedrick had asked two men to move some steel. They had no objection. Cool, accompanied by a committeeman approached Hedrick and said, "Well, if you are going to shoot off your big mouth, we just won't do it." The men continued to work but Hedrick in order to avoid the men getting in trouble with the Local Union sent the men off the job and the work was stopped (R. 165).

See Firth Carpet Company v. N.L.R.B., supra.

Cool walked off the job without permission (R. 88, 131-132, 174).

Walking off the job without permission is ground for discharge. *Arnolt Motor Company,* 68 N.L.R.B. 868 (1946); *E. I. Du Pont de Nemours & Company,* 62 N.L.R.B. 816 (1945); *Central Wisconsin Motor Transport Co.,* 89 N.L.R.B. No. 143; 26 L.R.R.M. 1105.

The board makes some point of Respondent's failure to discharge Cool at the time of his insubordination and overstepping his authority. Such acquiescence on the part of Respondent did not require it to acquiesce indefinitely "and a decision not to do so does not necessarily reflect anti-union motives." *Vogue-Wright Studios,* 76 N.L.R.B. 773 (1948).

The case closest to the one before the Court is *The Timken Roller Bearing Company,* 60 N.L.R.B. 852 (1945). There the employee quit. He had been one of the organizers of the local union and was a member of the grievance committee. He was absent from work without notice to discuss grievances. Later the employee applied for work and was refused because of low production and disciplinary reports in employee's file despite the fact that employer needed grinders and seldom received applications from experienced grinders. At the same time employer was refusing the ex-employee's application, it accepted that of an inexperienced woman as a grinder.

The Trial Examiner said: "The Board's theory was that, since the employee's record had apparently not been bad enough to result in his discharge, and since employer needed and was hiring inexperienced grinders for want of experienced grinders, an inference should be drawn that the employee was refused re-employment because of his union activities. It is clear that employer alone made the decision not to re-employ the employee and that it was made on the basis of the information in the employment file and not on the employee's record or activities thereof. The Trial Examiner finds that the employee was refused re-employment because of his record and not because of his union membership or activities."

Footnote: (There is no allegation in the complaint and no showing that the employed had any animosity toward the Union. On the contrary, the

absence of any independent Sec. 8 (1) evidence and the respondent's ready recognition of the local as the representative of its members indicates otherwise." Petition dismissed, affirmed by Board.

An even stronger case involving discriminatory refusal to hire is that of *Firestone Tire & Rubber Company,* 67 N.L.R.B. 585 (1946), but the Board held that there was no unfair labor practice.

Employer checked applicant's former employers and was told that the employee would not be re-employed because he was a member of the union. Employee's unionism was discussed with prospective employer. Employer made extensive investigation of employee's qualifications before refusing to hire him.

Board said, "The burden was on Counsel for the Board to prove that employer was discriminately motivated in refusing to employ applicant rather than on employer to prove the opposite. * * * Employee had employed other union members and the record is devoid of evidence pointing to an anti-union animus on the part of employer."

The Trial Examiner makes some issue of the fact that an inexperienced man was hired to fill the vacancy for which the union had offered Cool (R. 18). Under a similar fact situation the Court in *N.L.R.B.* v. *William Davies Co.*, supra, at page 183 in overruling a Board decision found that where an experienced union man had been discharged for cause, and upon application for re-employment the experienced man was refused and an inexperienced man hired, and where there was no discrimination in the discharge of the union man, held

that since there was no discrimination in the discharge, there was no substantial evidence of discrimination in the refusal to rehire.

Yet the Board held that Respondent's refusal to employ Cool was motivated by a purpose to interfere with the employees' right to organize, and to discourage membership in a labor organization.

What could possibly be an adequate reason not to hire a person if the foregoing does not meet the test?

Our view of this proceeding is buttressed by the Amendment of Section 10 (c) of the Act which reads: "No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause."

As stated in the *House Miscellaneous Reports, III, 80th Congress, 1st Session, Report No. 510, pg. 39, Conference Report:*

"Furthermore, in Section 10 (c) of the amended Act, as proposed in the conference agreement, it is specifically provided that no order of the Board shall require the reinstatement of any individual or the payment to him of any back pay if such individual was suspended or discharged for cause and this, of course, applies with equal force whether or not the acts constituting the cause for discharge were committed in connection with a concerted activity." And at Page 55, "The House Bill also included, in Sec. 10 (c) of the amended Act, a provision forbidding the Board to order reinstatement or back pay for any employee who has been suspended or discharged, unless the weight of the evidence showed that

the employee was not suspended or discharged for cause. * * * The conference agreement * * * simply provides that no order of the Board shall require reinstatement or back pay for any individual who was suspended or discharged for cause. Thus employees who are discharged or suspended for interferring with other employees at work, whether or not in order to transact union business, or for engaging in activities, whether or not union activities, contrary to shop rules, or for communist activities, or for other cause (See *Wyman-Gordan* v. *N.L.R.B.,* 153 F. 2d 480) will not be entitled to reinstatement."

The House Labor Committee Report states:

"Section 10 (c) This section, dealing with remedies the Board may prescribe, contains these three significant changes. * * *

"C. A third change forbids the Board to reinstate an individual unless the weight of the evidence shows that (modified in Act, to omit reference to 'weight of the evidence') the individual was not suspended or discharged for cause. In the past, the Board, admitting that an employee was guilty of gross misconduct, nevertheless frequently reinstated him, 'inferring' that, because he was a member or an official of a union, this, not his misconduct, was the reason for the discharge.

"Matter of Wyman-Gordan Company, 62 N.L.R.B. 561, is typical of the Board's attitude in such cases. In that case, the employer discharged an active union member for interrupting other employees at their work on materials for war. The Board reinstated the man with back pay. Company appealed. * * * Declaring that 'any

interference, slight or moderate,' justified discharge, the Court said (17 L.R.R. 823):

> 'If it were not before us in print, we would find it difficult to believe that any responsible person or agency would resort to such asinine reasoning. The charge made in Sec. 10 (e) on this subject is intended to put an end to the belief, now widely held and certainly justified by the Board's decisions, that engaging in union activities carries with it a license to loaf, wander about the plants, refuse to work, waste time, break rules and engage in incivilities and other disorders and misconduct. The bill will require that the new Boards rulings shall be consistent with what the Supreme Court said in upholding the Act, that it (the Act)—does not interfere with the normal right of the employer to select its employees or to discharge them, * * * the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than * * * intimidation and coercion. (*N.L.R.B. v. Jones & Loughlin Steel Corp.*, 301 U. S. 1, 45-46).'

"The Board may not 'infer' an improper motive when the evidence shows cause for discipline or discharge." *House Labor Committee Report, House Miscellaneous Reports, II, 80th Congress, 1st Session, Report No. 245,* pages 42 and 43.

It is obvious that Congress intended a change in Board Administration; or, otherwise, there would have been no change in the law. The law was changed. Congress obviously intended that any employer who had reasons, not connected with Union activity, should not be ordered to reinstate a discharged employee. But we are not faced with a discharge case. It is a refusal to employ. Our position is that much stronger. In the *Sands Mfg.*

Co. case, 306 U. S. 332, 59 S. Ct. 508, 83 L. Ed. 682, the Supreme Court upheld the action of an employer, faced with a strike, calling on Union for replacements.

In the last cited case there was no explanation for the conduct of the employer in deliberately using a Union for a hiring agency. The Supreme Court approved it.

Here we have a person who refuses to take reasonable direction from his superior, stopped the job on two occasions, caused one man to quit the boom, caused trouble by demanding that orders to the men be directed through the head rafter, and walked off the job without permission. But the Board writes Respondent was actuated by an anti-union purpose. The same Board ruled Respondent's punishment should be lightened because, "* * * the Respondent has not demonstrated a general intent to defeat self-organization and an attitude of opposition to the purposes of the Act. We are particularly mindful in this regard of the Respondent's past amicable relations with this and other unions and the fact that Respondent has been dealing with the union under a collective bargaining agreement" (R. 49).

CONCLUSION

We believe that the Board properly evaluated this case when it acquitted the Respondent of anti-union bias through its supplemental order. If cause for non-employment is not found in any one of the following:

Cool's refusal to take orders from his superior, Cool's unwarranted stopping of the job on two occasions, Cool caused one man to quit the boom, Cool caused trouble by

demanding that orders to the men be directed through the head rafter and Cool walked off the job for an hour and a half without permission.

Cool was refused employment because of insubordination and overstepping his authority.

What constitutes cause?

Respectfully submitted,

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JARVIS B. BLACK
Attorneys,
Leadbetter Logging &
Lumber Company.

STATE OF OREGON }
County of Multnomah } ss.

I, Jarvis B. Black, one of attorneys for Respondent, do hereby certify that I have prepared the foregoing copy of Respondent's Brief and have carefully compared the same with the original thereof; and that it is a correct transcript therefrom and of the whole thereof.

Portland, Oregon, dated the 26th day of January, 1951.

Jarvis B. Black

of Attorneys for Respondent